

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

GDRR Properties, LLC, a
California Limited Liability
Company;
Tesfaldet Bahlibi;
Asghedet Tesfai;
and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Defendants GDRR Properties, LLC, a California Limited Liability Company; Tesfaldet Bahlibi; Asghedet Tesfai; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially

1 equipped van.

2 2. Defendant GDRR Properties, LLC owned the real property located at or
3 about 1290 S Bascom Ave., San Jose, California, in March 2015.

4 3. Defendant GDRR Properties, LLC owned the real property located at or
5 about 1290 S Bascom Ave., San Jose, California, in April 2015.

6 4. Defendant GDRR Properties, LLC owned the real property located at or
7 about 1290 S Bascom Ave., San Jose, California, in May 2015.

8 5. Defendant GDRR Properties, LLC owned the real property located at or
9 about 1290 S Bascom Ave., San Jose, California, in June 2015.

10 6. Defendant GDRR Properties, LLC owned the real property located at or
11 about 1290 S Bascom Ave., San Jose, California, in February 2016.

12 7. Defendant GDRR Properties, LLC owned the real property located at or
13 about 1290 S Bascom Ave., San Jose, California, in April 2016.

14 8. Defendant GDRR Properties, LLC owns the real property located at or
15 about 1290 S Bascom Ave., San Jose, California, currently.

16 9. Defendant Tesfaldet Bahlibi owned the Come n' Save located at or
17 about 1290 S Bascom Ave., San Jose, California, in March 2015.

18 10. Defendant Tesfaldet Bahlibi owned the Come n' Save located at or
19 about 1290 S Bascom Ave., San Jose, California, in April 2015.

20 11. Defendant Tesfaldet Bahlibi owned the Come n' Save located at or
21 about 1290 S Bascom Ave., San Jose, California, in May 2015.

22 12. Defendant Tesfaldet Bahlibi owned the Come n' Save located at or
23 about 1290 S Bascom Ave., San Jose, California, in June 2015.

24 13. Defendant Tesfaldet Bahlibi owned the Come n' Save located at or
25 about 1290 S Bascom Ave., San Jose, California, in February 2016.

26 14. Defendant Tesfaldet Bahlibi owned the Come n' Save located at or
27 about 1290 S Bascom Ave., San Jose, California, in April 2016.

28 15. Defendant Tesfaldet Bahlibi owns the Come n' Save located at or about

1 1290 S Bascom Ave., San Jose, California, currently.

2 16. Defendant Asghedet Tesfai owned the Come n' Save located at or about
3 1290 S Bascom Ave., San Jose, California, in March 2015.

4 17. Defendant Asghedet Tesfai owned the Come n' Save located at or about
5 1290 S Bascom Ave., San Jose, California, in April 2015.

6 18. Defendant Asghedet Tesfai owned the Come n' Save located at or about
7 1290 S Bascom Ave., San Jose, California, in May 2015.

8 19. Defendant Asghedet Tesfai owned the Come n' Save located at or about
9 1290 S Bascom Ave., San Jose, California, in June 2015.

10 20. Defendant Asghedet Tesfai owned the Come n' Save located at or about
11 1290 S Bascom Ave., San Jose, California, in February 2016.

12 21. Defendant Asghedet Tesfai owned the Come n' Save located at or about
13 1290 S Bascom Ave., San Jose, California, in April 2016.

14 22. Defendant Asghedet Tesfai owns the Come n' Save ("Store") located at
15 or about 1290 S Bascom Ave., San Jose, California, currently.

16 23. Plaintiff does not know the true names of Defendants, their business
17 capacities, their ownership connection to the property and business, or their
18 relative responsibilities in causing the access violations herein complained of,
19 and alleges a joint venture and common enterprise by all such Defendants.
20 Plaintiff is informed and believes that each of the Defendants herein,
21 including Does 1 through 10, inclusive, is responsible in some capacity for the
22 events herein alleged, or is a necessary party for obtaining appropriate relief.
23 Plaintiff will seek leave to amend when the true names, capacities,
24 connections, and responsibilities of the Defendants and Does 1 through 10,
25 inclusive, are ascertained.

26
27 **JURISDICTION & VENUE:**

28 24. The Court has subject matter jurisdiction over the action pursuant to 28

1 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
2 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

3 25. Pursuant to supplemental jurisdiction, an attendant and related cause
4 of action, arising from the same nucleus of operative facts and arising out of
5 the same transactions, is also brought under California's Unruh Civil Rights
6 Act, which act expressly incorporates the Americans with Disabilities Act.

7 26. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
8 founded on the fact that the real property which is the subject of this action is
9 located in this district and that Plaintiff's cause of action arose in this district.

10
11 **FACTUAL ALLEGATIONS:**

12 27. Plaintiff has gone to the Store on a number of occasions during the
13 relevant statutory period, including March 2015, April 2015, May 2015, June
14 2015, February 2016 and April 2016. Plaintiff went there to shop.

15 28. The Store is a facility open to the public, a place of public
16 accommodation, and business establishment.

17 29. Unfortunately, although parking spaces were one of the facilities
18 specifically reserved for patrons, there were no compliant accessible handicap
19 parking spaces available for persons with disabilities that complied with the
20 Americans with Disability Act Accessibility Guidelines (ADAAG) during
21 plaintiff's visits.

22 30. The standard disabled parking space did not have the required signage
23 bearing the International Symbol of Accessibility (ISA) logo.

24 31. The standard disabled parking space did not have the required
25 "Minimum Fine \$250" signage.

26 32. The standard disabled parking space did not have required tow-away
27 signage.

28 33. The standard disabled parking space did not have the required "NO

1 PARKING” lettering in the access aisle.

2 34. The existing access aisle did not have the required blue border.

3 35. The parking stall and access aisles for use by persons with disabilities
4 are not level with each other because there is a built up curb ramp that runs into
5 the access aisle and parking stall. This results in slopes greater than 2.1%.

6 36. The Defendants had no policy or plan in place to make sure that the
7 parking space reserved for persons with disabilities remained useable prior to
8 plaintiff’s visits.

9 37. Currently, there is one standard disabled parking space but the parking
10 space is not compliant with the law.

11 38. Currently, there is no van-accessible parking.

12 39. Currently, Defendants fail to maintain this accessible parking space in
13 compliance with the Americans with Disabilities Act Accessibility Guidelines
14 (ADAAG).

15 40. Currently, the standard disabled parking space does not have the
16 required signage bearing the International Symbol of Accessibility (ISA) logo.

17 41. Currently, the standard disabled parking space does not have the
18 required “Minimum Fine \$250” signage.

19 42. Currently, the standard disabled parking space does not have required
20 tow-away signage.

21 43. Currently, the standard disabled parking space does not have the
22 required “NO PARKING” lettering in the access aisle.

23 44. Currently, the existing access aisle does not have the required blue
24 border.

25 45. Currently, the parking stall and access aisle are not level.

26 46. Currently, slopes are greater than 2.1%.

27 47. Currently, the Defendants have no policy or plan in place to make sure
28 that the accessible parking space reserved for persons with disabilities remain

1 useable prior to plaintiff's visits.

2 48. Entrance into the Store is another one of the facilities, privileges and
3 advantages offered by Defendants to patrons of the business.

4 49. The entrance door hardware at the Store had a pull bar style handle that
5 required tight grasping to operate.

6 50. Currently, the entrance door hardware at the Store has a pull bar style
7 handle that requires tight grasping to operate.

8 51. Transaction counters are also one of the facilities, privileges, and
9 advantages offered by Defendants to patrons of the Store.

10 52. Although there was a lowered, 36-inch transaction counter at the Store
11 for use by persons with disabilities, the transaction counter at the Store was
12 less than 36 inches in width.

13 53. Currently, although there is a lowered, 36-inch transaction counter at
14 the Store for use by persons with disabilities, the transaction counter at the
15 Store is less than 36 inches in width.

16 54. The barriers existed during each of plaintiff's visits in 2015 and 2016.

17 55. The plaintiff frequents the San Jose area and has visited there on scores
18 of occasions last year and this year. He went to the Store in June 2015 and
19 February 2016, made a purchase, and encountered the barriers. He visited the
20 Store on six other occasions but was deterred from going inside.

21 56. Plaintiff visited the Store twice in March 2015.

22 57. Plaintiff visited the Store once in April 2015.

23 58. Plaintiff visited the Store twice in May 2015.

24 59. Plaintiff visited the Store once in June 2015.

25 60. Plaintiff visited the Store once in February 2016.

26 61. Plaintiff visited the Store once in April 2016.

27 62. These barriers caused Plaintiff difficulty and frustration.

28 63. Plaintiff would like to return and patronize the Store but will be deterred

1 from visiting until the defendants cure the violations.

2 64. The defendants have failed to maintain in working and useable
3 conditions those features required to provide ready access to persons with
4 disabilities.

5 65. The violations identified above are easily removed without much
6 difficulty or expense. They are the types of barriers identified by the
7 Department of Justice as presumably readily achievable to remove and, in fact,
8 these barriers are readily achievable to remove. Moreover, there are numerous
9 alternative accommodations that could be made to provide a greater level of
10 access if complete removal were not achievable.

11 66. Plaintiff is and has been deterred from returning and patronizing the
12 Store because of his knowledge of the illegal barriers that exist. Plaintiff will,
13 nonetheless, return to assess ongoing compliance with the ADA and will
14 return to patronize the Store as a customer once the barriers are removed.

15 67. Given the obvious and blatant violation, the plaintiff alleges, on
16 information and belief, that there are other violations and barriers on the site
17 that relate to his disability. Plaintiff will amend the complaint, to provide
18 proper notice regarding the scope of this lawsuit, once he conducts a site
19 inspection. However, please be on notice that the plaintiff seeks to have all
20 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
21 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
22 he can sue to have all barriers that relate to his disability removed regardless of
23 whether he personally encountered them).

24 68. Additionally, on information and belief, the plaintiff alleges that the
25 failure to remove these barriers was intentional because: (1) these particular
26 barriers are intuitive and obvious; (2) the defendants exercised control and
27 dominion over the conditions at this location and, therefore, the lack of
28 accessible facilities was not an "accident" because had the defendants

1 intended any other configuration, they had the means and ability to make the
2 change.

3
4 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
5 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
6 Defendants.) (42 U.S.C. section 12101, et seq.)

7 69. Plaintiff re-pleads and incorporates by reference, as if fully set forth
8 again herein, the allegations contained in all prior paragraphs of this
9 complaint.

10 70. Under the ADA, it is an act of discrimination to fail to ensure that the
11 privileges, advantages, accommodations, facilities, goods and services of any
12 place of public accommodation is offered on a full and equal basis by anyone
13 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
14 § 12182(a). Discrimination is defined, inter alia, as follows:

- 15 a. A failure to make reasonable modifications in policies, practices,
16 or procedures, when such modifications are necessary to afford
17 goods, services, facilities, privileges, advantages, or
18 accommodations to individuals with disabilities, unless the
19 accommodation would work a fundamental alteration of those
20 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 21 b. A failure to remove architectural barriers where such removal is
22 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
23 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
24 Appendix "D."
- 25 c. A failure to make alterations in such a manner that, to the
26 maximum extent feasible, the altered portions of the facility are
27 readily accessible to and usable by individuals with disabilities,
28 including individuals who use wheelchairs or to ensure that, to the

1 maximum extent feasible, the path of travel to the altered area and
2 the bathrooms, telephones, and drinking fountains serving the
3 altered area, are readily accessible to and usable by individuals
4 with disabilities. 42 U.S.C. § 12183(a)(2).

5 71. Any business that provides parking spaces must provide accessible
6 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
7 every eight of those accessible parking spaces but not less than one must be a
8 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991
9 Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six accessible
10 parking spaces must be van accessible. 2010 Standards § 208.2.4.

11 72. Here, the lack of van accessible parking space is a violation of the law.

12 73. Any business that provides parking spaces must provide accessible
13 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. To qualify
14 as a reserved handicap parking space, the space must be properly marked and
15 designated. Under the ADA, the method, color of marking, and length of the
16 parking space are to be addressed by state or local laws or regulations. See 36
17 C.F.R., Part 1191, § 502.3.3. Under the California Building Code, to properly
18 and effectively reserve a parking space for persons with disabilities, each
19 parking space must be at least 216 inches in length. CBC § 11B-502.2. The
20 access aisle must extend the full length of the parking spaces it serves. 2010
21 Standards § 502.3.2. Under the California Building Code, a sign must be
22 posted in a conspicuous place at the entrance to the parking lot or immediately
23 adjacent to each handicap parking space, with lettering 1 inch in height, that
24 clearly and conspicuously warn that unauthorized vehicles parking in the
25 handicap parking spaces can be towed at the owner’s expense. CBC §
26 1129B.4. The surface of the access aisle must have a blue border. CBC §
27 1129B.3. The words “NO PARKING” in letters at least a foot high must be
28 painted on the access aisle. *Id.*

1 74. Here, there was no pole or wall mounted signage with the wheelchair
2 logo, in violation of the ADA.

3 75. Here, Defendants failed to post the required “Minimum Fine \$250”
4 signs, in violation of the ADA.

5 76. Here, Defendants failed to post the required tow-away signs, in violation
6 of the ADA.

7 77. Here, there was no “NO PARKING” lettering in the access aisle, in
8 violation of the ADA.

9 78. Here, there was no blue border on the access aisle, in violation of ADA.

10 79. Under the 1991 Standards, parking spaces and access aisles must be
11 level with surface slopes not exceeding 1:50 (2%) in all directions. 1991
12 Standards § 4.6.3. Here, the access aisle is not level and has a ramp taking up
13 part of the access aisle. Under the 2010 Standards, access aisles shall be at the
14 same level as the parking spaces they serve. Changes in level are not
15 permitted. 2010 Standards 502.4. “Access aisle are required to be nearly level
16 in all directions to provide a surface for wheelchair transfer to and from
17 vehicles.” 2010 Standards § 502.4 Advisory. Specifically, built up curb ramps
18 are not permitted to project into access aisles and parking spaces. *Id.* No more
19 than a 1:48 slope is permitted. 2010 Standards § 502.4.

20 80. Here, the failure to provide level parking is a violation of the law.

21 81. Door hardware must have a shape that is easy to grasp with one hand
22 and does not require tight grasping, tight pinching, or twisting of the wrist to
23 operate. 1991 Standards § 4.13.9; 2010 Standards § 404.2.7.

24 82. Here the failure to provide such door hardware is a violation of the ADA.

25 83. In areas used for transactions where counters have cash registers and
26 are provided for sales or distribution of goods or services to the public, at least
27 one of each type shall have a portion of the counter which is at least 36 inches
28 in length with a maximum height of 36 inches above the floor. 1991 Standards

1 § 7.2(1). Under the 2010 Standards, where the approach to the sales or service
2 counter is a parallel approach, such as in this case, there must be a portion of
3 the sales counter that is no higher than 36 inches above the floor and 36 inches
4 in width and must extend the same depth as the rest of the sales or service
5 counter top. 2010 Standards § 904.4 & 904.4.1.

6 84. Here, no such accessible cashier counter has been provided in violation
7 of the ADA.

8 85. A public accommodation must maintain in operable working condition
9 those features of its facilities and equipment that are required to be readily
10 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

11 86. Here, the failure to ensure that the accessible facilities were available
12 and ready to be used by the plaintiff is a violation of the law.

13 87. Given its location and options, plaintiff will continue to desire to
14 patronize the Store but he has been and will continue to be discriminated
15 against due to the lack of accessible facilities and, therefore, seeks injunctive
16 relief to remove the barriers.

17
18 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
19 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
20 Code § 51-53.)

21 88. Plaintiff re-pleads and incorporates by reference, as if fully set forth
22 again herein, the allegations contained in all prior paragraphs of this
23 complaint.

24 89. Because the defendants violated the plaintiff's rights under the ADA,
25 they also violated the Unruh Civil Rights Act and are liable for damages. (Cal.
26 Civ. Code § 51(f), 52(a).)

27 90. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
28 discomfort or embarrassment for the plaintiff, the defendants are also each

1 responsible for statutory damages, i.e., a civil penalty. (Cal. Civ. Code §
2 55.56(a)-(c).)

3 91. Although the plaintiff was markedly frustrated by facing discriminatory
4 barriers and this frustration possibly qualifies as an emotional distress injury,
5 even manifesting itself with minor and fleeting physical symptoms, the
6 plaintiff does not value this very modest frustration and physical personal
7 injury greater than the amount of the statutory damages.

8
9 **PRAYER:**


10 Wherefore, Plaintiff prays that this Court award damages and provide
11 relief as follows:

12 1. For injunctive relief, compelling Defendants to comply with the
13 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
14 plaintiff is not invoking section 55 of the California Civil Code and is not
15 seeking injunctive relief under the Disabled Persons Act at all.

16 2. Damages under the Unruh Civil Rights Act, which provides for actual
17 damages and a statutory minimum of \$4,000.

18 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
19 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

20
21 Dated: December 23, 2016 CENTER FOR DISABILITY ACCESS

22
23 By: 
24 Russell Handy, Esq.
25 Attorney for plaintiffs
26
27
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